

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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**1996**

In the Matter of

Revision of Part 22 and Part 90 of the  
Commission's Rules to Facilitate Future  
Development of Paging Systems

Implementation of Section 309(j)  
of the Communications Act --  
Competitive Bidding

WT Docket No. 96-18

PP Docket No. 93-253

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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**COMMENTS  
OF  
CONSOLIDATED COMMUNICATIONS MOBILE SERVICES, INC.  
ON  
INTERIM LICENSING**

Consolidated Communications Mobile Services, Inc. ("CCMS"), by its attorneys, hereby submits these comments on the Interim Licensing proposals in the above-captioned proceeding.<sup>1</sup> CCMS is the licensee of a mid-sized paging system providing service in central Illinois.

<sup>1</sup> On February 14, 1996, CCMS filed pro forma applications to effect a corporate restructuring. After grant of these applications, CCMS will be merged into a successor company which will hold FCC paging licenses. That company will be known as Consolidated Communications Telecom Services, Inc. ("CCTS").

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On February 9, the Federal Communications Commission ("FCC" or "Commission") released a Notice of Proposed Rulemaking in this Docket.<sup>2</sup> That NPRM makes proposals for the future of paging services in this country, in order to "promote continued growth and preserve vigorous competition".<sup>3</sup> These proposals include permanently freezing the growth of incumbent paging licensees and auctioning the paging frequencies.

To preserve the integrity of its proposals, the Commission's NPRM proposes an "Interim Licensing" approach which would preclude acceptance of new paging applications, except in certain limited circumstances. CCMS strongly opposes the Interim Licensing approach, as proposed by the Commission, because it will deprive the public of service, because it has led to speculative paging applications and because the Commission will not be able to meet its deadlines for lifting the freeze. The Commission's proposal may have merit in cases where competitive paging services are universally available, but in some of the rural and suburban areas of the country, many citizens don't have service at all, much less competitive providers of service.<sup>4</sup> In those circumstances, the Interim Licensing freeze will prevent service from being provided. Surely, this is not what the Commission intended.

If the Commission moves to a geographic area licensing scheme rather than a site-by-site approach, it could disadvantage the thousands of incumbent

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<sup>2</sup> Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems; Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Notice of Proposed Rulemaking, FCC 96-52, February 9, 1996 ("NPRM").

<sup>3</sup> NPRM, para. 1.

<sup>4</sup> Even in some areas of the country where there are two or more paging service providers, some services may not be available. For example, CCMS has found there to be a high demand for voice paging among its fire, police and ambulance customers. Yet CCMS is the only provider in its area to continue to offer this service.

paging licensees through whose efforts the paging industry has grown so remarkably. The Commission therefore proposed to allow incumbent licensees to continue to operate their systems, even after the establishment of geographic areas. In other words, each geographic area would have carved out from it the service areas of the incumbent licensees. However, in order to prevent incumbent licensees from trying to expand their service territories before geographic areas could be licensed, the Commission instituted the Interim Licensing proposal.

Unfortunately, word of the Commission's plan leaked out into the community and the number of paging applications increased dramatically shortly before the freeze went into effect. A large number of those applications seem to have been filed by speculators eager to grab any chunk of free spectrum, before the Commission starts charging for it through the auction process. Many legitimate paging operators refused to participate in the "land rush" for spectrum. Those operators are now unfairly disadvantaged because they decided to seek spectrum only when they could use it and not only because it was free. The speculators win and the operators lose under the Commission's Interim Licensing proposal.

Such unfairness might be reasonably necessary if it were reasonably temporary. But, in order to enhance the value of a geographic area license at auction, the freeze on processing paging applications must continue until the auctions are over. That could take years. CCMS is aware that the Commission is promising a "quick" turnaround on this matter, but we think it is naive to believe that the freeze will be lifted soon, just as it was naive of the Commission to believe that the freeze would be noncontroversial.<sup>5</sup> Given the enormous amount of work tasked

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<sup>5</sup> The Commission imposed the Interim Licensing freeze without following the procedures mandated by the Administrative Procedure Act based in part on its belief that the freeze would be "noncontroversial". NPRM, para 157. That has proven to be both untrue and a serious misjudgment of the paging industry.

to the Commission by the Telecommunications Act of 1996, the workload on the Wireless Bureau caused by this and other Dockets, and the likelihood of reconsideration and appeal, it is highly unlikely that this proceeding will be resolved quickly. During that time, legitimate paging operators will not be able to expand their systems or provide service to new customers. What may have been an acceptable level of unfairness when only the paging operators were affected, becomes intolerable when it affects the paging customers.

The Commission invites comment on an alternative proposal that would allow incumbent licensees to expand their systems during the freeze, but only on a secondary basis.<sup>6</sup> If that proposal is adopted, expansions of an incumbent's interference contour would receive no protection in the event that the Commission ultimately adopts geographic licensing. This proposal, too, is unsatisfactory. As it is, incumbents will be extremely vulnerable under the Commission's geographic licensing proposal to encroachments upon their service areas. The only protection they will have is the fact that their systems will have primary status and are thus protected. To relegate those systems to an unprotected status means that an aggressive competitor can deliberately interfere with the incumbent's signal for the sole purpose of driving customers away. That does not seem an appropriate use of the radio frequency spectrum.

CCMS would like to propose a third alternative, one which will satisfy the Commission's desire to preserve spectrum availability for future applicants, while accommodating the desire of incumbents to expand their systems where there is a legitimate need for service. The CCMS proposal would permit the Commission to grant expansion applications from incumbent paging licensees under certain limited conditions. First, the expansion must be into an adjacent area of the incumbent

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<sup>6</sup> NPRM, para. 143.

licensee either unserved by any paging licensee, or not subject to competition, or where certain paging services proposed to be offered by the applicant are not otherwise available. Second, it must be for the same frequency used by the licensee in its existing system. Finally, each applicant must certify that it will construct and place into operation the newly licensed transmitter within an expedited period of six months of grant of the Construction Permit. Failure to comply will entail automatic revocation of the Construction Permit. This proposal creates incentives for licensees to go forward with plans to serve presently unserved areas, but assures that speculation in licenses will not occur.

For these reasons, CCMS strongly opposes the Commission's Interim Licensing Proposal and requests that the Commission consider its alternative proposal.

Respectfully submitted,

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March 1, 1996